



CALIFORNIA COASTAL COMMISSION

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February 14, 2001

TO: Coastal Commissioners and Interested Public

FROM: Peter M. Douglas, Executive Director
Sarah Christie, Legislative Coordinator

SUBJECT: LEGISLATIVE REPORT FOR February 2001

CONTENTS:

This report provides summaries and status of bills that affect the Coastal Commission and California's Coastal Program as well as bills that staff has identified as coastal related legislation.

Note: This information can be accessed through the Commission's World Wide Web
Homepage at **www.coastal.ca.gov**

Please contact Sarah Christie, Legislative Coordinator, at (916) 455-6067 with any questions on the material contained in this report.

COMMITTEE ASSIGNMENTS

Coastal-related bills in the Assembly are referred to the Natural Resources Committee, and may in some cases be double-referred to Water Parks and Wildlife Committee. The Commission's budget is heard by Assembly Budget Subcommittee 3, before consideration by the full Budget Committee.

Coastal-related bills in the Senate are referred to the Natural Resources Committee, and may in some cases be double-referred to Senate Environmental Quality. The Commission's budget is heard by Senate Budget Subcommittee 2, before consideration by the full Budget Committee.

The Assembly and Senate committee assignments are as follows:

- | | |
|--|--|
| • <u>Assembly Budget Subcommittee 3:</u>
Fran Pavley (Chair)
Dick Dickerson
Fred Keeley
Juan Vargas
Mark Wyland
Tony Cardenas, Alternate
George Runner, Alternate | <u>Senate Budget Subcommittee 2:</u>
Not Yet Announced |
| • <u>Assembly Natural Resources:</u>
Howard Wayne (Chair)
Dennis Hollingsworth (Vice Chair)
Dick Dickerson
Tom Harman
Hannah-Beth Jackson
Fred Keeley
Alan Lownethal
Gloria Negrete-McLeod
Carole Migden
Fran Pavley
Phil Wyman | <u>Senate Natural Resources and Wildlife:</u>
Sheila Kuehl (Chair)
Rico Oller (Vice Chair)
Dede Alpert
Debra Bowen
Maurice Johannessen
Dick Monteith
Deborah Ortiz
Byron Sher
Tom Torlakson |
| • <u>Assembly Water Parks and Wildlife:</u>
Dean Florez (Chair)
Dick Dickerson (Vice Chair)
Sam Aanestad
Dion Aroner
Tom Calderon
Dario Frommer
Jackie Goldberg
Dennis Hollingsworth
Christine Kehoe
Dave Kelley
Tim Leslie
Fran Pavley
Helen Thomson
Howard Wayne
Phil Wyman | <u>Senate Environmental Quality:</u>
Byron Sher (Chair)
Bruce McPherson (Vice Chair)
Dede Alpert
Wes Chesboro
Liz Figueroa
Sheila Kuehl
Tom McClintock
Jack O'Connell |

IMPORTANT LEGISLATIVE DATES

The California State Legislature re-convened on January 3, 2001. The last day to submit bills to Legislative Counsel was Jan. 26, 2001. Over 3,000 bills were submitted on that day. The last day for authors to actually introduce new bills is February 23, 2001. Many of these may be “unjacketed” or “spot” bills, and full text will not be available until later in the year. The California Coastal Commission is not sponsoring any bills this session.

Feb 23; Last day to introduce new bills

April 5-16; Spring Recess

April 27; Last day for policy committees to meet and report, fiscal bills

May 11; Last day for policy committees to meet and report, non-fiscal bills

June 1; Last day for fiscal committees to report to Floor

June 8; Last day for bills to report out of house of origin

June 15; Budget must be passed by midnight

July 20-Aug 20, Summer Recess

Sept 14; Last day for each house to pass bills

Oct. 14; Last day for Governor to sign or veto bills

PRIORITY LEGISLATION

SB 1 (Alpert) California Endowment for Marine Preservation

This bill would create the California Endowment for Marine Preservation, and the California Marine Resources Trust Fund, to be administered as proscribed by the bill. Both funds would receive a portion of the savings afforded to owner/operators of offshore oil and gas platforms, in the event they choose to participate in a "Rigs to Reefs" program, to be administered by the Department of Fish and Game, in consultation with the Commission, State Lands Commission, BCDC and Minerals Management Service. (Analysis attached.)

Introduced 01/04/00
Status Referred to N.R.&W. Com.

SB 55 (Kuehl) City of Malibu Local Coastal Program

This bill would authorize the Commission to re-direct Local Government Assistance Grant funds to reimburse the agency for costs associated with the preparation and certification of the city of Malibu's Local Coastal Program, consistent with the provisions of AB 988 (Hertzberg). (Analysis attached.)

Introduced 12/21/00
Status Referred to N.R.&W. Com.

AB 104 (Nation) Coastal Conservancy, Motor Vehicle Mitigation Fund

This bill would authorize the Coastal Conservancy This bill would authorize the conservancy to establish the Motor Vehicle Mitigation Subaccount, for the acquisition of open space, and the protection, restoration, and enhancement of streams, creeks, wetlands and watersheds. The bill would impose a fee of up to \$4, to be collected by the Department of Motor Vehicles, upon the registration or renewal of registration of every motor vehicle registered in the county of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, or Sonoma for purposes of funding the account, should at least three of those counties choose to participate in the program. Ten percent of the funds collected would go to the Regional Water Quality Control Board to fund transportation-related water quality projects.

Introduced 01/12/01
Status Awaiting Committee Assignment

SB 107 (Sher) Natural Community Conservation Planning

This bill would repeal the Natural Community Conservation Planning Act of 1982, and replace it with the new Act. This bill would authorize the Department of Fish and Game to enter into agreements with local governments and private property owners for the purpose of allowing 'take' of species covered by the plan, subject to certain standards relating to collection of data, application of scientifically sound principles, and a process for public participation.

Introduced 01/22/01
Status Awaiting Committee Assignment

Attachments

BILL ANALYSIS S.B. 55 (Kuehl)

SUMMARY

This bill would allow the Coastal Commission to shift funds (\$150,000) currently and previously allocated for grants to local governments for the purpose of preparing Local Coastal Plans (LCP), to the Commission for the purpose of preparing an LCP for the city of Malibu, pursuant to the provisions of AB 988 (Chapter 952, Statutes of 2000).

PURPOSE OF THE BILL

The purpose of this bill is to reimburse the Coastal Commission for costs associated with preparing and certifying an LCP for the city of Malibu.

ANALYSIS

This bill would allow the Coastal Commission to shift funds currently allocated for grants to local governments for the purpose of preparing Local Coastal Plans (LCP), to the Commission for the purpose of preparing an LCP for the city of Malibu, pursuant to the provisions of AB 988 (Chapter 952, Statutes of 2000).

- The Coastal Act requires coastal cities and counties to prepare LCPs which are certified by the Coastal Commission if consistent with the Coastal Act. After certification, the local jurisdiction assumes permitting authority. Until certification, the Coastal Commission retains permitting authority.
- The city of Malibu has not prepared a certifiable LCP.
- AB 988 (Chapter 952, Statutes of 2000) requires the Commission to prepare and certify a Local Coastal Plan for the city of Malibu by September 15, 2002.
- This bill would divert \$150,000 of unencumbered local government grant funds to the Commission to reimburse the costs of contracting with a consultant to assist with preparation of the plan.
- This bill would cover the Commission's budgetary shortfall caused by the unfunded mandate from the Legislature to prepare Malibu's LCP.
- The Commission cannot encumber these grant funds for this purpose without legislative authorization.

LEGISLATIVE HISTORY

AB 988 (Hertzberg) (Chapter 952, Statutes of 2000) mandated the Commission to prepare and certify an LCP for the city of Malibu. The Commission must produce a public review a draft version of the land use plan portion of the local coastal program by May 1, 2001, complete an initial draft of the land use portion by January 15, 2002, and the entire local coastal program by September 15, 2002. The bill did not include any funding or additional staff to complete the work.

PROGRAM BACKGROUND

The Coastal Act currently requires each local government lying, in whole or in part, within the Coastal Zone to prepare a Local Coastal Program consistent with the policies of the Coastal Act for that portion of the coastal zone within its jurisdiction. The Commission is required to review a Local Coastal Program submitted by a local government and, if the Commission finds the submittal is in conformity with the policies of the Coastal Act, certify the LCP.

Assembly Bill 988, which went into effect January 1, 2001, amended the Coastal Act, Public Resources Code Sections 30000, et seq., to add Section 30166.5 which establishes mandatory timelines and delegates responsibility for preparation and certification of a LCP for the City of Malibu to the Coastal Commission. As amended, pursuant to AB 988, the Coastal Act requires the Commission to submit to the City of Malibu an initial draft of the Land Use Plan (LUP) portion of the LCP for the City of Malibu on or before January 15, 2002. The bill further requires the Commission, after public hearing and consultation with the City of Malibu, to certify a Local Coastal Program for the City on or before September 15, 2002.

Additionally, the bill requires the City of Malibu, subsequent to certification of the LCP, to immediately assume coastal development permitting authority, thereby imposing a state-mandated LCP. The bill further provides that, notwithstanding specified requirements for the review and approval of development projects, once the City assumes coastal development

permit authority, no application for a coastal development permit shall be deemed approved if the City fails to take timely action to approve or deny the application.

Preparation of the LCP for certification by the Commission will be the responsibility of the staff of the Commission's South Central Coast District office in Ventura. This office has been responsible for reviewing and analyzing coastal development permit applications and making recommendations to the Commission relative to consistency with the Coastal Act for various projects within the City since its incorporation in 1991. Coastal Act issues raised by development applications in Malibu are often complex and sometimes contentious which has resulted in a heavy demand on the workload of staff in the Ventura office as well as the Commission which must ultimately rule on applications for development proposals within the City in lengthy public hearings.

Preparation of the LCP in accordance with the mandatory timelines established by AB 988 will require adherence to a strict timetable in order to provide for the required 6-week public review period, consultation with the City and public hearings before the Malibu City Council and the Commission prior to adoption and certification of the LUP and the subsequent Implementation Plan (IP). It is necessary to release the draft LUP for public review by May 1, 2001 in order to provide a minimum of two public hearings before the Commission in October, 2001 and January, 2002. Correspondingly, it will be necessary to release the draft Implementation Plan by March 1, 2002 to allow for public review and hearings to achieve final certification by September 15, 2002.

In order to meet the statutory requirements of AB 988, the Commission has had to hire an independent consultant. This bill would allow the Commission to utilize local government assistance grant funds which have not yet been encumbered for the purpose of retaining the consultant. The LCP preparation work is consistent with the stated purpose of the grant funding.

FISCAL IMPACT

This bill does not make a new appropriation. Nor does it augment the Commission's existing budget. This bill reallocates local government assistance grant money that would otherwise have been provided to local jurisdictions (including Malibu) for LCP preparation, to the Commission for the same purpose. The reallocation provides the equivalent of 2 additional PYs to complete the work in the required time frame. The additional costs cannot be absorbed by the Commission's existing budget without curtailing staff training, travel and related program costs.

This bill would prevent a net loss to the Commission's approved budget. This bill does not affect the city of Malibu, the regulated community nor the state general fund.

SUPPORT/OPPOSITION

None on file

RECOMMENDATION: SUPPORT

Because AB 988 mandated the Coastal Commission to prepare and certify an LCP for the city of Malibu without providing additional funding or personnel, the Commission has had to tap funds budgeted for core programs to hire a consultant to perform the work. Reallocating funds already appropriated for LCP work to reimburse the Commission would allow these funds to be spent for actual LCP work as intended, rather than reverting back to the general fund. SB 55 would also allow the Commission to use previously budgeted core program funding as planned.

LEGISLATIVE STAFF CONTACT

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BILL ANALYSIS; SB 1 (Alpert)

SUMMARY

S.B. 1 would create the California Endowment for Marine Preservation, a permanent funding source for projects which conserve, protect, restore and enhance the state's coastal marine resources, governed by a board of directors appointed by the Governor. The bill would also create the California Marine Resources Trust Fund, with the Secretary for Resources and the Director of the Department of Fish and Game serving as trustees for the fund. Both the endowment and the fund would receive their funding primarily from a portion of the savings afforded to owners/operators of de-commissioned oil and gas platforms which are allowed to all or part of their platforms in place, rather than removing them upon expiration of their leases. (Also known as "Rigs to Reefs").

Once permitted, the areas surrounding the rigs would be off limits for fishing and other extractive activities with the exception of permitted research activities.

PURPOSE OF THE BILL

The purpose of the bill is to:

- Allow oil companies to realize cost savings by leaving offshore oil and gas structures in place, rather than bear the full cost of removal as specified in their individual lease agreements;
- Provide a permanent source of funding to support projects which conserve, restore and enhance marine resources;
- Create a funding source for marine-related activities within the Department of Fish and Game;
- Conserve existing marine resources associated with offshore oil and gas platforms.

ANALYSIS

S.B. 1 does not call for the creation or implementation a Rigs to Reefs program. Rather, S.B. 1 seeks to create the mechanism by which any future funds generated by decommissioning through savings to owners may be collected, administered and expended. If no platforms are allowed to remain in place, no funds will be collected from this source. The bill does not favor any particular method of abandonment, nor does the bill limit or affect the authority of the Commission nor any federal, state or local agency with regulatory authority or planning oversight of offshore oil platforms.

However, the creation of an endowment fund and the trust fund in the absence of conclusive scientific evidence supporting the concept of "in situ" rig abandonment, could create expectations on the part of industry and interest groups. Combined with the substantial incentive provided to industry, it is not unreasonable to assume that once the endowment and the fund are created, pressure will be brought to bear on regulatory agencies, including the commission, to approve such conversions. This, in turn, could set up conflicts with existing guidelines pertaining to the location and creation of artificial reefs. Section 6421 of the Fish and Game Code currently defines artificial reefs as:

"...manmade or natural objects intentionally placed in selected areas of the marine environment to duplicate those conditions that induce production of fish and invertebrates on natural reefs and rough bottoms, and that stimulate the growth of kelp or other midwater plant life which creates natural habitat for those species."

Clearly, location and material for constructing offshore platforms were chosen for the suitability of oil and gas extraction, not for enhancing underwater ecosystems. A 1995 study conducted by DFG on 5

artificial reefs in the San Diego area reaffirmed previous determinations by the department that metal structures (in this case, sunken vessels) are less suitable than other materials for artificial reef habitat, and support less diversity than other types of reefs. While the bill specifies that decommissioned rigs converted to artificial reefs must benefit marine resources, comply with water quality laws and navigational safety, any change in current policy on the criteria for placement and construction of artificial reefs should occur only after rigorous scientific review.

S.B. 1 also raises questions outside the scope of the Coastal Commission's purview. The issue of the state's potential liability for maintenance and legal exposure resulting from personal claims and potential environmental impacts should be reviewed.

LEGISLATIVE HISTORY

This bill is the re-introduction of SB 241, introduced by the author during the 1999-2000 session. SB 241 was withdrawn by the author after substantial changes suggested by the Department of Fish and Game were met with opposition by environmental groups at the end of session.

PROGRAM BACKGROUND

Offshore oil and gas platforms in state and federal waters have become defacto habitat for many species of fish and invertebrates. As these platforms approach the end of their productive years, and the leases authorizing their operations expire, the companies that own them must initiate the process of "decommissioning." This involves capping the wells and removing the platforms. The pilings supporting the platform structures must also be removed, or cut off at a depth that does not pose a risk to vessels. The California Coastal Commission must issue Coastal Development Permits (CDPs) for all decommissioned platforms in state and federal waters under jurisdiction provided under the California Coastal Act and the federal Coastal Zone Management Act. The Minerals Management Service (MMS) estimates that the federal government does not expect to decommission any platforms before 2005.

Commercial fishers and some environmental groups support the complete removal of all structures upon decommissioning. Commercial fishers feel that partial removal poses a hazard to their vessels and equipment, particularly nets and trawling devices. Environmental groups feel that leaving portions of the rigs in place produces a constant pollution source as structures decompose, contributes to the unnatural littering of the ocean floor, and may attract species to gather in areas which cannot actually sustain healthy, reproducing populations.

Oil companies, sports fishers, recreational divers and some members of the scientific community argue that the submerged portions of the rigs should be left in place. While no oil companies have gone on record in support of S.B. 1, the industry has been actively promoting the concept of Rigs to Reefs. Leaving the pilings in place would result in substantial savings to oil companies. Sports fishers point out that complete removal of the pilings results in the loss of marine species and habitat. Biological inventories indicate a high concentration and diversity of species are present in the vicinity of some, but not all, of the platforms.

While expert opinions have been offered on both sides of the issue, conclusive scientific evidence supporting the actual habitat value of offshore oil rigs in comparison to intentionally built artificial reefs or undisturbed reef structures has been lacking in this debate. The Coastal Commission has been participating since 1997 in an interagency decommissioning working group comprised of federal, state and local government agencies with regulatory interest in a variety of decommissioning issues. Public workshops, along with recognition on the part of the working group that better science was needed to

address the question of converting oil rigs to artificial reefs in part led to the formation of the Select Scientific Advisory Committee on Decommissioning. Convened under the auspices of the University of California, this is a panel of marine biologists and research scientists who are looking specifically at the habitat value of these artificially created ecosystems. The advisory committee released the initial draft of their last December will be submitted in the summer of 2000. It may or may not contain conclusions or specific recommendations, pending further research.

OTHER STATES' INFORMATION

All five gulf states (Texas, Louisiana, Florida, Mississippi and Alabama) have rigs to reefs programs. These programs relocate the structures rather than leaving them in place, which adds significantly to the cost of conversion, and reduces the amount available to the state. While rigs to reefs has enhanced recreational use in the Gulf, it has not provided substantial economic benefits. A typical conversion nets \$25,000 to \$300,000 to the state. As of fy 1999-2000, Louisiana had received a total of \$5.1 million from 36 conversions. Texas has received \$2.5 million. It should be noted that ocean conditions in the Gulf are different than those off the coast of California, (many rigs are in extremely shallow depths, the bottom is primarily sandy, etc.) thus the comparison is not entirely analagous.

FISCAL IMPACT

Cost savings to the owner or operator of a platform or facility from partial removal would be calculated and accrue to the state as follows:

35% of the cost for total removal from facilities in water less than 200 feet in depth, 50% of the cost for total removal if the facility is in water between 200-400 feet of water, and 65% of the cost for total removal if the facility is in water greater than 600 feet in depth. An unspecified percentage of these funds would be deposited in the trust fund, the endowment and directly with county governments adjacent to the decommissioned rigs.

The formula for calculating the funds paid to the state affords the greatest percentage of savings to the platforms most likely to be proposed as reefs. The majority of platforms (12) are located in waters less than 200 feet. These would generate for the state only 35% of the total cost of removal, affording a 65% savings to the owner/operator. As shallow depths harbor greater species diversity and have the highest recreational value, it is likely that these platforms would be the most desirable for the Rigs to Reefs program. Requiring a greater percentage of savings to the state for shallow rigs would be more fiscally beneficial for the state.

ECONOMIC IMPACT

Exact economic benefits to the state or local governments cannot be calculated with assurance, as estimates for the cost of rig removal vary widely, and the bill does not yet proscribe the percentages for distribution.

EXISTING LAW

State waters extend three miles seaward from the mean high tide line. Federal waters extend from 3 to 12 miles and the United States Exclusive Economic Zone extends from 12 to 200 miles. (The Outer Continental Shelf, or OCS is the submerged land in federal waters). The removal of de-commissioned

oil and gas rigs is controlled by the specific language contained in the state and/or federal leases that apply to them and, where applicable, Coastal Commission approvals. While some leases require complete removal, others include options for leaving portions in place, or defer the applicable environmental and engineering constraints to the time of removal.

Decommissioning and removal of oil rigs in either state or federal waters is subject to regulatory review by the California Coastal Commission. The federal Coastal Zone Management Act (CZMA) subjects any federal activity (i.e. federal permits or authorization to remove platforms) that affects coastal resources to review by the commission for consistency with the state's Coastal Management Program (i.e., the Coastal Act). The Commission has fairly broad regulatory discretion to approve, deny, or approve with modifications a request to remove all or part of an offshore platform in state or federal waters.

The Army Corps of Engineers, Environmental Protection Agency, National Marine Fisheries Service and the Minerals Management Service have jurisdiction over OCS platform issues. The California Department of Fish and Game regulates the creation, placement and maintenance of artificial reefs in state waters by administration of the California Artificial Reef Program (CARP).

This bill does not supercede any existing regulatory authority of any federal, state or local agency. This bill does not relieve the prior owner or operator of the oil rigs from any continuing liability associated with seepage or release of oil into the marine environment. The bill does not address liability issues associated with personal injury or loss associated with future use.

SUPPORT/OPPOSITION

Support:

None on file

Opposition:

None on file

ARGUMENTS

Pro: The quality of California's marine environment and the diversity of fisheries it supports continues to decline. More funding is needed for marine research and projects which preserve and restore critical habitat and natural resources. The research and projects funded by the California Endowment for Marine Preservation would benefit the state by preserving and enhancing marine resources.

While the biological sustainability of this type of artificial reef has not yet been quantified, one positive effect of leaving them in place is not in dispute. Trawl fishing, extremely disruptive to benthic ecosystems and indiscriminate in its take of targeted and non-targeted species, is not feasible within a certain radius of these structures. Thus, the ocean floor remains undisturbed in the vicinity of these structures.

CON: S.B. 1 may be premature. Both MMS and the State Lands Commission estimate that no oil rigs will be decommissioned before 2005. The habitat viability of offshore platforms is questionable. If S.B. 1 is enacted, and the Rigs to Reefs program is not deemed to be an environmentally acceptable alternative to complete removal, then the state will have created an endowment fund of questionable value.

By providing a substantial economic incentive for leaving decommissioned rigs in place, the state will be characterized as having anticipated and perhaps even suggested a preference for a determination that the Rigs to Reefs program is in the best interests of the state. Requiring oil companies to contribute the full amount of decommissioning, less the cost of necessary studies and administrative costs, would remove this incentive, and allow the state to make an independent determination free from the industry intervention about the relative merits of the program relative to the merits of the program.

The bill provides that the oil companies must provide sufficient funds to the state to provide for overall management and to ensure that the state can defend itself against any liability, but it is unclear how the amount necessary to accomplish this would be calculated. If endowment funding is utilized to cover the costs of enforcement, monitoring, maintenance and liability, it is unclear how much will be left for the purpose of marine research and enhancement.

Items beyond the scope of the Commission's purview also raise concerns. While Commission staff is supportive of the concept of creating "no take" zones around the decommissioned platforms, it is unclear whether DFG has the necessary resources to enforce this, along with ongoing maintenance